

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of S.M. SHANNON, Minor.

UNPUBLISHED
May 20, 2014

No. 317468
Oakland Circuit Court
Family Division
LC No. 11-790729-NA

Before: RIORDAN, P.J., and DONOFRIO and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(b)(ii) (failure to protect child from physical injury or abuse), (c)(i) (conditions of adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm if child is returned to parent). We affirm.

Respondent first argues that the trial court erred when it found that statutory grounds for terminating her parental rights had been proven by clear and convincing evidence. We review a trial court's factual findings, including its determination that a statutory ground for termination of parental rights has been proven by clear and convincing evidence, for clear error. *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *Id.*

A trial court may terminate a respondent's parental rights if it finds that (1) a statutory ground under MCL 712A.19b(3) has been established by clear and convincing evidence and (2) that termination is in the children's best interests. *In re CR*, 250 Mich App 185, 194-195; 646 NW2d 506 (2001).

The trial court terminated respondent's parental rights under MCL 712A.19b(3)(b)(ii), (c)(i), (g), and (j), which provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

* * *

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The child came into care after she tested positive for marijuana and cocaine at birth. The Department of Human Services (DHS) filed a removal petition alleging respondent's substance abuse, inadequate housing, and the inability to provide for the child. Respondent pleaded responsible to petition allegations, and the child became a temporary court ward. Respondent and the DHS agreed to a Parent/Agency Treatment Plan by which respondent was to achieve and maintain sobriety, suitable housing, and financial stability. Respondent was ordered to participate in services that included substance abuse treatment, random drug screens, and supervised parenting time. Respondent was also ordered to attend NA meetings three times per week and to sign releases with treatment providers. Petitioner was to provide the necessary service referrals and bus passes to respondent. Approximately 13 months after the child was removed from respondent's care, petitioner filed a termination petition because respondent failed to make adequate progress with her treatment plan. Between the filing of the termination petition and the termination hearing, respondent was given additional time to seek substance abuse treatment and demonstrate progress with services.

The proofs showed that, after more than 16 months of services, respondent failed to comply with and benefit from her treatment plan. Critically, respondent did not adequately address her drug addiction. Respondent completed inpatient substance abuse treatment and one

of two phases of follow-up treatment. Respondent was later discharged from the second phase of treatment because of nonattendance. After the filing of the termination petition, the trial court deferred termination proceedings for two months so that respondent could participate in additional substance abuse treatment. The evidence clearly showed that, during the pendency of the case, respondent failed to attend the three weekly NA meetings as ordered. Respondent did not have an NA sponsor, which she admitted was a critical component to the NA program. Significantly, respondent provided only 39 of the required 83 random drug screens. And of those 39 submitted screens, she tested positive six times for marijuana or cocaine. During the additional two months between the filing of the termination petition and the termination hearing, which was time that the trial court gave respondent to address her substance abuse, she missed 11 of the required 25 random drug screens and tested positive for cocaine once.

Turning our attention to MCL 712A.19b(3)(c)(i), we conclude that the trial court did not clearly err in terminating respondent's parental rights under this ground. The conditions that led to petitioner's intervention were respondent's substance abuse along with her homelessness and financial instability. Respondent made minimal progress on her treatment plan. She completed parenting classes and regularly attended two-hour supervised parenting sessions each week. She arrived late or left early for nine of the 52 visits. At the time of the termination hearing, respondent was earning \$8 per hour at a 30-hour per week job. She was living with the maternal grandmother, who was the legal guardian of respondent's older child. However, questions remained about whether respondent had ended her relationship with the minor child's father, a known substance abuser and convicted sex offender. The trial court correctly found that respondent had a chronic substance abuse issue. There was persuasive testimony from the case worker that, despite support services, respondent's behaviors and drug dependence remained unchanged. Clearly, after more than 16 months of services, respondent failed to rectify the issues that brought her child before the court. As a result, the trial court did not clearly err in finding that respondent's serious and recurring substance abuse problem would not be rectified within a reasonable time considering the child's tender age.

These proofs similarly satisfied the statutory grounds under MCL 712A.19b(3)(g) and (j). Respondent remained unable to properly provide for her child and keep the child out of harm's way. She had more than 16 months to overcome her drug addiction and provide a stable, drug-free home environment. At the termination hearing, she had, at best, very limited income working a part-time job. Although she resided with the maternal grandmother, there was additional evidence that she remained in a relationship with the child's father, whose substance abuse and criminal history posed additional risks to the child. Respondent's failure to substantially comply with her treatment plan was evidence of continued inability to provide proper care and custody of her child. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Respondent's argument that there was no testimony of her ever intentionally harming her child misses the mark. It is clear from the statutory language that termination may be sought regardless of the parent's intentions. Moreover, it would be clearly harmful to place the young child in the care of respondent, who had an unabated cocaine addiction.

On appeal, respondent argues unpersuasively that the trial court prematurely terminated her rights. Respondent notes that she complied with other portions of her treatment plan. It is undisputed that respondent completed parenting classes, regularly visited her child, and acted appropriately during those visits. However, spending two hours per week with one's child in a

supervised setting falls far short from the responsibilities and challenges of full-time parenting. Respondent also claims that she had made some progress in achieving sobriety because she engaged in services. Respondent tested positive for cocaine and marijuana during the pendency of this case and twice was given additional time to achieve and demonstrate sobriety. Respondent had sought drug abuse treatment at least once before this case began and had received both inpatient and outpatient treatment during this case. Sadly, respondent was unable to overcome her longstanding drug addiction. At the termination hearing, respondent appeared unable to grasp the difficulty of achieving and maintaining sobriety. She testified that, for the most part, she had her drug problems under control. When asked what she would do if given additional time, respondent replied that she would likely attend three NA meetings a week. Yet she did not even seek an NA sponsor during the time when there was a pending termination petition. Based on these proofs, giving respondent additional time would likely have been futile.

Because we conclude that the trial court did not clearly err in terminating respondent's parental rights with respect to three of the relied-upon statutory grounds, we need not consider whether the trial court erred with respect to the fourth ground, MCL 712A.19b(3)(b)(ii). See *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011).

Respondent also argues that termination of her parental rights was not in the child's best interest. Like its other factual findings, a trial court's best-interest finding is reviewed for clear error. *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009). "In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012).

Respondent offers scant proof that she was able to care for the child. She notes that the case worker admitted that there was a bond between respondent and the child and contends that the trial court did not give proper weight to the detrimental effect of severing the mother/child bond. These arguments are groundless. Respondent's professed love for her child did not outweigh the other factors favoring termination of her parental rights. The child was born prematurely and addicted to drugs. She had been in foster care since discharge from the hospital following her birth. Respondent spent only two hours each week with the child in a supervised setting and never requested additional visiting time. Thus, the mother-child bond was likely tenuous. Respondent clearly was unable to overcome her drug addiction. Termination may be in a child's best interests even in instances where the parent makes some progress in addressing his or her substance abuse issues when the evidence shows that it is unlikely that the child could be returned to the parent's home within the foreseeable future. See *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012). Moreover, respondent's child was thriving in the care of the foster parents and had met developmental milestones. The child needed permanency and

stability, which respondent was unable to provide within the foreseeable future. Thus, the trial court did not clearly err in finding that terminating respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Michael J. Riordan
/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood